

Dear CarolAnn,

In reviewing your OGE-278 (Public Financial Disclosure Report) in INTEGRITY, we noticed that you reported owning certain interests that might be affected by the performance of your official duties. These assets appear to be over the regulatory thresholds, so we are sending you this cautionary letter to remind you to take appropriate steps to ensure that you do not have a conflict of interest. We are not concluding that you currently have a conflict of interest; rather, you should read the information below and contact an ethics official if you have any questions. Remember, it is your obligation to ensure that your private interests (including your assets) do not conflict with your public duties. Be vigilant!

Why Do We Raise Concerns?

A criminal statute, 18 U.S.C. §208(a), bars you from participating in any “particular matter” that affects any of your own interests or any imputed interest (e.g., spouse or dependent children). Your interests include not only ownership interests (e.g., stock, bonds, mutual funds) but also the interests of outside entities (e.g., any organization in which you are serving as an officer, director, or trustee) and prospective employers (any entity with which you are seeking future employment). So you can’t participate in any particular matter that will have a direct and predictable effect on your financial interest.

The important point to remember here is that 18 U.S.C. §208(a) is a criminal statute. A knowing violation of this statute can result in criminal prosecution and penalties. It’s important to understand the elements of the financial conflict of interest statute. You have to participate “personally and substantially” in a “particular matter” in order for there to be a conflict of interest, and there has to be a “direct and predictable” effect on your financial interests.

What is a particular matter?

A “particular matter” involves any deliberation, decision or action and that is focused on the interests of specific persons/organizations or any identifiable class of persons. It includes “specific party” matters (e.g., contracts, grants, assistance agreements, lawsuits, enforcement action, permits, licenses, audits) and matters of “general applicability” (e.g., rulemaking or policy matters) that distinctively affect a particular industry or identifiable class of persons.

What is “personal and substantial” participation?

Personal participation means that you were personally involved in the matter or that you directed or controlled a subordinate’s participation. *Substantial participation* means that your involvement in the matter was of significance, which includes decision-making, review or recommendation as to an action being taken, signing or approving a final document, and/or participating in a final decision briefing.

What is a “direct and predictable” effect on a financial interest?

The effect must be direct and predictable and not speculative (though the actual dollar amount does not need to be ascertained). There must be close causal link between any decision or action to be taken in the matter and any expected effect of the matter on the financial interest.

YOUR FINANCIAL INTEREST(S) OF CONCERN

We identified the following financial interest(s) that may be affected by the performance of your official duties. This does not necessarily mean that you have a current conflict of interest, it simply means that your holdings are above certain regulatory thresholds.

(b) (6)

[Redacted]

Additionally, you have holdings in the following companies that, when aggregated, could put you over the regulatory thresholds. Due to the way the OGE Form 278 gathers information, the categories of earning values are so broad that we cannot determine if you own, for example, \$5,000 worth of stock, or over \$75,000 worth of stock. Please review your holdings in these companies to make sure you are able to fulfill your ethics obligations.

(b) (6)

[Redacted]

Regulatory Exemption Levels

There are different regulatory exemption levels, depending on the type of particular matter. You can still participate if you own less than the levels below:

SPECIFIC PARTY MATTER	MATTER OF GENERAL APPLICABILITY
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e.g., an enforcement action against ABC Widget Company e.g., a contracting decision involving ABC Widget Company	e.g., working on a rulemaking that affects all widget manufacturers
≤\$15,000 aggregate in ABC Widget Co. ≤\$25,000 aggregate for any affected non-parties (e.g., DEF Widget Corp. which manufactures a similar product)	≤\$25,000 aggregate in any one widget maker (e.g., ABC Widget Corp. or DEF Widget Corp.) ≤\$50,000 aggregate in all affected parties (all widget makers)

Don't forget that you have to add together your own ownership interest and any imputed interest. You also have to aggregate how many assets you own in the same sector.

EXAMPLE: You own \$8,000 worth of ABC Widget and your spouse also owns \$8,000. You cannot direct your staff to participate in an event at ABC Widget offices because you own more than \$15,000 in the company and cannot participate in any particular matter that involves or affects ABC Widget as a specific party.

EXAMPLE: Your father-in-law passed away recently and bequeathed to your spouse shares in an oil and gas company worth \$30,000. You can't work on a specific party matter involving that company and also now can't work on any rulemaking that affects all oil and gas companies.

What to do if you're worried about a conflict

If you are concerned that you have a conflict, contact OGC/Ethics immediately. We will go over the available options for you. Typically, potential conflict of interests are resolved in one of the following ways:

- 1) **Don't participate.** This means that you do not participate in the matter at all, including attending meetings, receiving briefings or being copied on substantive documents. We recommend that you document your recusal in writing, with a copy to OGC/Ethics.
- 2) **Divest entirely or get below the regulatory threshold.** You can either sell outright on your own or, if the sale will result in a tax liability for capital gains, then you may instead contact OGC/Ethics for a "Certificate of Divestiture" before you sell. This will enable you to defer capital gains tax, but you have to ask OGC/Ethics for assistance before you divest.
- 3) **Ask for a waiver.** Only the Agency's Designated Agency Ethics Official (DAEO) in OGC is authorized to waive the prohibition of 18 U.S.C. §208(a) where the interest is "not so substantial as to be deemed likely to affect the integrity of services which the Government may expect." OGC must consult with another federal agency before issuing a waiver, which are rarely granted.

* * * * *

If you need more information or advice, feel free to contact OGC/Ethics at ethics@epa.gov. Any of us will be happy to assist you.

From: [Ross, Margaret](#)
To: [Siciliano, CarolAnn](#)
Subject: Cautionary note based on 2017 278e filing
Date: Thursday, November 30, 2017 1:14:00 PM

Dear CarolAnn

Justina and I discussed, and have decided to deal with this in the following way: I've certified your financial disclosure report, and I'm sending you a "cautionary note" that explains the question I have and what you need to look out for. I saw that you called, and that you've sent me an invite for Monday. If you read this and have no further questions, awesome! Cancel the meeting and we're good to go. If you do have questions, then we'll chat on Monday.

Best,
Margaret

I've In reviewing your OGE-278 (Public Financial Disclosure Report) in INTEGRITY, we noticed that you reported owning certain interests that might be affected by the performance of your official duties. These assets appear to be over the regulatory thresholds, so we are sending you this cautionary letter to remind you to take appropriate steps to ensure that you do not have a conflict of interest. We are not concluding that you currently have a conflict of interest; rather, you should read the information below and contact an ethics official if you have any questions. Remember, it is your obligation to ensure to that your private interests (including your assets) do not conflict with your public duties. Be vigilant!

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The important point to remember here is that 18 U.S.C. §208(a) is a criminal statute. A knowing violation of this statute can result in criminal prosecution and penalties. It's important to understand the elements of the financial conflict of interest statute. You have to participate "personally and substantially" in a "particular matter" in order for there to be a conflict of interest, and there has to be a "direct and predictable" effect on your financial interests.

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The effect must be direct and predictable and not speculative (though the actual dollar amount does not need to be ascertained). There must be close causal link between any decision or action to be taken in the matter and any expected effect of the matter on the financial interest.

We identified the following financial interest(s) that may be affected by the performance of your official duties. This does not necessarily mean that you have a current conflict of interest.

(b) (6)

Age Group	Number of Cases (Approximate)
0-4	65
5-9	85
10-14	85
15-19	45
20-24	75
25-29	80
30-34	85
35-39	65
40-44	95
45-49	35
50-54	55
55-59	65
60-64	55
65+	75
65+	100
65+	35
65+	35
65+	75
65+	65

- (b) (6)
-
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Regulatory Exemption Levels

There are different regulatory exemption levels, depending on the type of particular matter. You can still participate if you own less than the levels below:

SPECIFIC PARTY MATTER	MATTER OF GENERAL APPLICABILITY
e.g., an enforcement action against ABC Widget Company e.g., a contracting decision involving ABC Widget Company	e.g., working on a rulemaking that affects all widget manufacturers
≤\$15,000 aggregate in ABC Widget Co. ≤\$25,000 aggregate for any affected non-parties (e.g., DEF Widget Corp. which manufactures a similar product)	≤\$25,000 aggregate in any one widget maker (e.g., ABC Widget Corp. or DEF Widget Corp.) ≤\$50,000 aggregate in all affected parties (all widget makers)

Don't forget that you have to add together your own ownership interest and any imputed interest. You also have to aggregate how many assets you own in the same sector.

EXAMPLE: You own \$8,000 worth of ABC Widget and your spouse also owns \$8,000. You cannot direct your staff to participate in an event at ABC Widget offices because you own more than \$15,000 in the company and cannot participate in any particular matter that involves or affects ABC Widget as a specific party.

EXAMPLE: Your father-in-law passed away recently and bequeathed to your spouse shares in an oil and gas company worth \$30,000. You can't work on a specific party matter involving that company and also now can't work on any rulemaking that affects all oil and gas companies.

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What to do if you're worried about a conflict

If you are concerned that you have a conflict, contact OGC/Ethics immediately. We will go over the available options for you. Typically, potential conflict of interests are resolved in one of the following ways:

1. **Don't participate.** This means that you do not participate in the matter at all, including attending meetings, receiving briefings or being copied on substantive documents. We recommend that you document your recusal in writing, with a copy to OGC/Ethics.
2. **Divest entirely or get below the regulatory threshold.** You can either sell outright on your own or, if the sale will result in a tax liability for capital gains, then you may instead contact OGC/Ethics for a "Certificate of Divestiture" before you sell. This will enable you to defer capital gains tax, but you have to ask OGC/Ethics for assistance before you divest.

3. **Ask for a waiver.** Only the Agency's Designated Agency Ethics Official (DAEO) in OGC is authorized to waive the prohibition of 18 U.S.C. §208(a) where the interest is "not so substantial as to be deemed likely to affect the integrity of services which the Government may expect." OGC must consult with another federal agency before issuing a waiver, which are rarely granted.

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If you need more information or advice, feel free to contact OGC/Ethics at ethics@epa.gov or any of us individually (Margaret Ross, Justina Fugh, Jeanne Duross, Jennie Keith). Any of us or your regional ethics counselor will be happy to assist you.

Margaret Ross | Ethics Officer | Office of General Counsel | US EPA | William Jefferson Clinton Federal Building Room 4310A North | Washington, DC 20460 (for ground deliveries: 20004) | phone 202-564-3221

From: [Mosley, Ferne](#)
To: [Siciliano, CarolAnn](#)
Subject: Financial disclosure report review
Date: Wednesday, July 8, 2020 5:33:00 PM

Hello, I have reviewed your 2020 financial disclosure report and want to remind you of the conflict of interest law, 18 United States Code 208, to assist you in avoiding a potential conflict with your official duties and your financial interests. As you know, this law prohibits you from participating personally and substantially in a particular matter at EPA affecting your financial interests.

What is a particular matter?

A “particular matter” involves any deliberation, decision or action and that is focused on the interests of specific persons/organizations or any identifiable class of persons. It includes “specific party” matters (e.g., contracts, grants, assistance agreements, lawsuits, enforcement action, permits, licenses, audits) and matters of “general applicability” (e.g., rulemaking or policy matters) that distinctively affect a particular industry or identifiable class of persons.

What is “personal and substantial” participation?

Personal participation means that you were personally involved in the matter or that you directed or controlled a subordinate’s participation. Substantial participation means that your involvement in the matter was of significance, which includes decision-making, review or recommendation as to an action being taken, signing or approving a final document, and/or participating in a final decision briefing.

What is a “direct and predictable” effect on a financial interest?

The effect must be direct and predictable and not speculative (though the actual dollar amount does not need to be ascertained). There must be close causal link between any decision or action to be taken in the matter and any expected effect of the matter on the financial interest.

Regulatory Exemption Levels

Depending on the value of your holdings and the matter you are working on, there may be a regulatory exemption that will allow you to participate in the matter, but it is your responsibility to regularly review the value of your financial interests and manage your workload to ensure you are in compliance with the law before participating.

The exemption amounts are outlined below:

SPECIFIC PARTY MATTER	MATTER OF GENERAL APPLICABILITY
e.g., an enforcement action against ABC Widget Company e.g., a contracting decision involving ABC Widget Company	e.g., working on a rulemaking that affects all widget manufacturers
≤\$15,000 aggregate in ABC Widget Co. ≤\$25,000 aggregate for any affected non-parties (e.g., DEF Widget Corp. which manufactures a similar product)	≤\$25,000 aggregate in any one widget maker (e.g., ABC Widget Corp. or DEF Widget Corp.) ≤\$50,000 aggregate in all affected parties (all widget makers)

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If you have any questions, please contact me.

Thank you.

Sincerely, Ferne

Ferne L. Mosley, Attorney-Advisor

U.S. Environmental Protection Agency

Ethics Office/Office of General Counsel

William Jefferson Clinton Building North, Room 4113A

1200 Pennsylvania Ave, NW

Washington, DC 20460

(202) 564-8046 (desk)

(202) 306-2998 (mobile)

mosley.ferne@epa.gov

From: [Fugh, Justina](#)
To: [Siciliano, CarolAnn](#)
Bcc: [Clarke, Victoria](#)
Subject: Notification of late filing on a transaction report; waiver of late fee (one time only)
Date: Monday, May 11, 2020 3:56:00 PM
Attachments: [CASiciliano 278T.pdf](#)
[Advisory to all 278 filers about filing fee.pdf](#)
[When to Report Transactions on the OGE 278T and Part 7 - May 2019.docx](#)

Carol Ann,

On April 29, you filed a Periodic Transaction Report (278-T) that reported on (b) (6) reportable transactions (attached). Of those transactions, (b) (6) occurred on March 12, 2020, while (b) (6) occurred in December 2019. In calculating the length of time between the transactions and filing of the 278-T, we found that these (b) (6) transactions occurred beyond the 45 day limit. To remind, your deadline for filing a periodic transaction report is “within 30 days of receiving notification of a covered [meaning reportable] transaction, but not later than 45 days after the date such transaction” was executed. See 5 CFR 2634.201(f) and 5 CFR 2634.310(d).

Unfortunately, you did not ask in advance for an extension of time to file and then failed to meet the filing deadline.

Under the STOCK Act, all public filers must file periodic transaction reports in a timely manner. On 8/29/19, David Cozad, the Acting Designated Agency Ethics Official, issued the attached memorandum that reminded you of this obligation and informed you that the penalty for failing to file timely is \$200. See 5 U.S.C. app. § 104(d)(1), 5 C.F.R. § 2634.704. At this point, your ethics officials are in the position of having to fine you \$200 for the missed reports. Because this is your first violation, we have certified your report. We assumed that you would want to request a waiver, so as the Alternate Designated Agency Ethics Official, I have granted you this one-time reprieve from the late filing fee associated with this report. For all future reports, however, you are on notice that you will have to file timely or ask for an extension. Should you again miss a deadline, then you will be fined the \$200 late fee but advised that you may seek a waiver pursuant to 5 C.F.R. § 2634.704(b). That you are on notice already will, of course, be taken into consideration for any future request for a waiver.

If you have any questions about your financial disclosure reporting requirements, please contact me or ethics@epa.gov. In the future, please make sure that you file your periodic transaction reports on time.

Justina



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
Washington, D.C. 20460

OFFICE OF
GENERAL COUNSEL

MEMORANDUM

SUBJECT: Timely Filing of Public Financial Disclosure and Periodic Transaction Reports

FROM: David Cozad *David Cozad* 8/29/19
Acting Designated Agency Ethics Official

TO: All EPA Public Financial Disclosure Report Filers

In 1978, Congress enacted the Ethics In Government Act, 5 U.S.C. app., to establish the Executive Branch financial disclosure reporting system that requires mandatory public disclosure of financial and employment information of certain officials and their immediate families. Because you occupy a designated position (either permanently or for more than 60 days on detail), you are required by this statute to file the public financial disclosure report. As executive branch employees, we are all bound by federal ethics laws and regulations, including prohibitions against financial conflicts of interest and loss of impartiality. Your disclosures allow the Office of General Counsel's Ethics Office (OGC/Ethics) to assist you in identifying and addressing potential or actual conflicts of interest in order to maintain the integrity of the Agency's programs and operations.

This memorandum formally reminds you that you are required by law to timely and accurately file your Public Financial Disclosure Reports (OGE 278e)¹ and Periodic Transaction Reports (OGE 278-Ts).² Failure to file timely will result in a **\$200 late filing fee** unless you formally request and receive a waiver of the late fee from the Designated Agency Ethics Official (DAEO) or Alternate Designated Agency Ethics Official (ADAEO).³ Unpaid late fees are subject to the Agency's⁴ and the government's debt collection procedures.

In addition to filing timely, you must also file a complete and accurate report. Should OGC/Ethics contact you for any additional required information, you will have no more than **30 days** to update your report. For guidance on how to file an accurate report, please refer to the Public Financial Disclosure Guide or contact OGC/Ethics at ethics@epa.gov.

¹ See 5 U.S.C. app. § 101; 5 C.F.R. § 2634.201.

² Pub. L. 112-105 § 11 (STOCK Act).

³ See 5 U.S.C. app. § 104(d)(1); 5 C.F.R. § 2634.704(a).

⁴ See Resource Management Directive System 2540-03-P2 dated 07/12/2016.

Please refer to this chart for your filing obligations:

OGE 278e - New Entrant reports	Within 30 days of entering a covered position (either by appointment to a permanent or acting in covered position)
OGE 278e – Incumbent reports	No later than May 15
OGE 278e – Termination reports	No later than 30 days after leaving a covered position (either through reassignment, resignation, or the end of acting in a covered position) (Reports may be submitted within 15 days prior to termination)
OGE 278T – Periodic transaction reports ⁵	The earlier of 30 days after learning of a transaction or 45 days of the transaction taking place.

How to request an extension of the filing deadline:

For good cause (e.g., travel, workload issues, sickness), you may request up to two 45-day extensions. Submit the request by email, including the reason, to ethics@epa.gov **prior to the due date**. Extensions cannot be granted after the due date has passed.

How to request the waiver of a late filing fee:

If *extraordinary circumstances* prevented you from meeting the deadline and OGC/Ethics assessed a late fee, you may request a waiver of the late fee. See 5 C.F.R. § 2634.704. Submit your request in writing to ethics@epa.gov, to the attention of the DAEO and ADAEO, describing the extraordinary circumstances and provide any supporting documentation. Please note that vacations or routine work obligations are not “extraordinary” circumstances. The decision to grant or deny a waiver is at the sole discretion of the DAEO/ADAEO and is final.

You are required by law to comply with these financial reporting obligations. Your colleagues in OGC/Ethics are available to provide assistance, but it is always your obligation to file your reports timely and accurately. In fact, ethics regulations *require* that we refer individuals to the Department of Justice (DOJ) when there is reasonable cause to believe that they have willfully failed to file a required report or provide the information that the report requires. The current maximum civil penalty is \$56,216.⁶

As public servants, we know that you take your ethics obligations seriously. As such, we expect you to make a good faith effort to adhere to the timeliness and completeness requirements of your financial disclosure reporting obligations. If you have any questions, please contact ethics@epa.gov.

ATTACHMENT - *When to Report Transactions on the OGE 278 and OGE 278T*

cc: Justina Fugh, Alternate Designated Agency Ethics Official

⁵ See attached guidance – *When to Report Transactions on the OGE 278 and OGE 278T*.

⁶ In 2012, OGC/Ethics referred an individual to DOJ for failure to file a termination report despite repeated reminders and entreaties. That individual paid a civil penalty of \$15,000 and still had to file the termination report.

When to Report Transactions

DUE DATE: The earlier of the following: 30 Days from Notification or 45 Days from Transaction

	Periodic Transaction Report	Annual and/or Termination Report
Investment Assets	Report on the OGE 278-T?	Report on Part 7 of the OGE 278e?
Transactions of \$1,000 or less		
• Any asset in which the transaction amount is \$1,000 or less regardless of the type of asset or who owns the asset	No	No
Your investment assets (or jointly held)		
• Your stocks	Yes	Yes
• Your bonds (except U.S. Treasury securities)	Yes	Yes
• Your commodity futures	Yes	Yes
• Your other investment securities	Yes	Yes
• Assets listed above in your (joint) brokerage accounts, (joint) managed accounts, IRAs, other retirement accounts, and/or other (joint) investment vehicles	Yes	Yes
Your spouse's investment assets		
• Spouse's stocks	Yes	Yes
• Spouse's bonds (except U.S. Treasury securities)	Yes	Yes
• Spouse's commodity futures	Yes	Yes
• Spouse's other investment securities	Yes	Yes
• Assets listed above in spouse's <u>own</u> brokerage account, managed accounts, IRAs, other retirement accounts, and/or other investment vehicles	Yes	Yes
Your dependent child's investment assets		
• Dependent child's stocks	Yes	Yes
• Dependent child's bonds (except U.S. Treasury securities)	Yes	Yes
• Dependent child's commodity futures	Yes	Yes
• Dependent child's other investment securities	Yes	Yes
• Assets listed above in dependent child's <u>own</u> brokerage account, IRAs, and/or other investment vehicles	Yes	Yes
Other investment assets irrespective of ownership		
• Real Property	No	Yes ¹
• Mutual funds, exchange traded funds, index funds and/or other "excepted investment funds" ²	No	Yes
• Any asset in which the transaction amount is \$1,000 or less	No	No
• Cash accounts (deposits and/or withdrawals)	No	No
• Money market accounts	No	No
• Money market funds	No	No
• Certificates of deposits	No	No
• US Treasury Securities (e.g., T bills, Treasury bonds, U.S. savings bonds)	No	No
• Federal Government Retirement Accounts (e.g., Thrift Savings Plan)	No	No
• Life insurance and annuities	No	No
• Collectibles	No	No
• Assets held within an excepted trust ³	No	No
• Transfer of assets between you, your spouse, and your dependent children	No	No

¹ Do not report the purchase or sale of your personal residence on Part 7 unless you rent it out at any time during the reporting period.

² To be an excepted investment fund (EIF), the asset must be:

- (a) widely held (more than 100 participants),
- (b) independently managed – arranged so that you neither exercise control nor have the ability to exercise control over the financial interests held by the fund, and
- (c) publicly traded (or available) or widely diversified.

Managed accounts, investment clubs, trusts, 529 accounts, brokerage accounts, and individual retirement accounts (IRAs) are not excepted investment funds in and of themselves. It may be that individual assets held within these types of investment vehicles may qualify as EIFs if, for example, your IRA holds a publicly-traded mutual fund. But the fact that you have a managed account does not absolve you of your reporting requirements. That account is legally owned by you, and you're responsible for its assets and reporting transactions. If you have questions, contact ethics@epa.gov.

³ OGC/Ethics must determine that your trust qualifies as an “excepted trust.” For help, email ethics@epa.gov.

From: [Fugh, Justina](#)
To: [Siciliano, CarolAnn](#)
Subject: RE: Notification of late filing on a transaction report; waiver of late fee (one time only)
Date: Tuesday, May 12, 2020 1:02:00 AM

Hi Carol Ann,

Okay and glad to know you've got a system going forward!

Justina

Justina Fugh | Director, Ethics Office | Office of General Counsel | US EPA | Mail Code 2311A | Room 4308 North, William Jefferson Clinton Federal Building | Washington, DC 20460 (for ground deliveries, use 20004 for the zip code) | phone 202-564-1786 | fax 202-564-1772

From: Siciliano, CarolAnn <Siciliano.CarolAnn@epa.gov>

Sent: Monday, May 11, 2020 8:23 PM

To: Fugh, Justina <Fugh.Justina@epa.gov>

Subject: RE: Notification of late filing on a transaction report; waiver of late fee (one time only)

Thank you, Justina, for the notice and for anticipating – and granting – my request for a reprieve from this \$200 penalty.

I just completed my April transaction report (with a few May transactions included). Of these (b) (6) transactions, (b) (6) occurred more than 30 days but less than 45 days ago. The rest are reported within 30 days of the transaction.

I now have acquired access to and mastered the new monthly electronic reporting system for our family investment accounts. I will enter transactions by the 7th day of each month hereafter.

Carol Ann Siciliano
Associate Assistant Administrator
Office of Chemical Safety and Pollution Prevention
U.S. Environmental Protection Agency
Office & Mobile: (202) 564-5489
siciliano.carolann@epa.gov

From: Fugh, Justina <Fugh.Justina@epa.gov>

Sent: Monday, May 11, 2020 3:57 PM

To: Siciliano, CarolAnn <Siciliano.CarolAnn@epa.gov>

Subject: Notification of late filing on a transaction report; waiver of late fee (one time only)

Carol Ann,

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Justina